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The Rural Telecommunications Group
National Telephone Cooperative Association
Organization for the Promotion and Advancement of Small Telecommunications Companies
Office of Advocacy, U.S. Small Business Administration

November13, 2000

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Reconsideration of Decision in WT Docket 97-82

Dear Chairman Kennard:

The National Telephone Cooperative Association (NTCA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the Rural Telecommunications Group (RTG), and the Office of Advocacy of the U.S. Small Business Association (SBA) urge you to reconsider your decision to drastically reduce the set-aside of PCS spectrum for the designated entities identified by Congress.

Section 309(j) of the Communications Act establishes a clear roadmap for the Commission to ensure that rural consumers and small businesses have access to public spectrum that would otherwise be purchased by only the largest and wealthiest companies. In 1994, the Commission properly recognized the unique need for a combination of spectrum set asides and bidding credits for broadband PCS due to the large capital requirements of PCS and the incumbent carriers' clear interest in the band. Even so, the Commission reserved only one third of the PCS spectrum for designated entities.

Today, the Commission relies on "dramatically changed circumstances" to cut the set aside by as much as two-thirds in some markets. The record simply does not support the Commission's decision to scale back this opportunity for smaller companies and rural telephone companies to acquire valuable spectrum. This decision will only lead to greater market concentration and further imbalance between meeting the spectrum needs of the largest carriers and meeting the public interest in bringing mobile service to rural areas. If the Commission is unwilling to roll back the crux of its decision, we urge you to take the following steps to lessen the severe impact on small companies and rural telephone companies.

The Commission should maintain the 10 MHz F Block licenses for designated entities. The purpose of establishing the F Block was to create greater opportunity for rural telephone companies and small businesses to acquire wireless PCS spectrum. The Commission itself recognized that the F Block set-aside has been the FCC's most successful mechanism to bring spectrum to designated entities. This should be reason alone to retain the set-aside. Nor should the Commission take back the F Block merely because entrepreneurs are rolling out in conformance with FCC build out deadlines, but not faster.

The Commission should place previously unpurchased, set-aside licenses into open auctions only on a prospective basis commencing after Auction No. 35. We urge the Commission not to apply retroactively a policy that would allow set-asides for only one auction. Instead, the FCC should apply this policy on a forward-looking basis so that designated entities have notice that the Commission will utilize a set-aside for only one auction. It is plainly unfair to undermine the business strategies of these bidders or new entrepreneurs who were not able to bid last year for these licenses.

Most importantly, NTCA, OPASTCO and RTG urge the Commission to increase the size of the bidding credits in open auctions and, at a minimum, retain them in PCS closed auctions. Bidding credits are necessary for small businesses and rural telephone companies to compete against larger carriers, even in a closed auction. With the implementation of the Commission's grandfathering rules, there is still a tremendous size disparity among potential bidders in Auction No. 35. Small businesses with revenues between $15 million and $40 million will be forced to bid against entities that have hundreds of millions of dollars in gross revenues.

The Commission previously recognized the need for bidding credits at a time when small businesses were competing with entities having not more than $125 million in gross revenues.[1] As the enclosed chart demonstrates, under the Commission's grandfathering rules, designated entities will be competing against companies that far exceed $125 million in gross revenues. For example, publicly traded eligible bidders in Auction No. 35 may include Telecorp PCS/Tritel, which is 1,416 percent larger than the largest very small business, and VoiceStream, which is 9,333% larger than the largest very small business. There may be additional large, privately held companies grandfathered into this auction as well.

The grandfathering policy effectively subjects designated entities in Auction No. 35 to a version of open bidding against companies of unlimited financial size even for the remaining licenses that are reserved only for designated entities. The Commission should increase or, at a minimum, retain bidding credits in auctions where grandfathered companies are eligible to participate.

[1] *Implementation of Section 309(j) of the Communications Act – Competitive Bidding,* Fifth Report and Order, 9 FCC Rcd 5532, at ¶ 133 (1994). The Commission explained that small businesses with gross revenues not exceeding $40 million "will be at a disadvantage in competing against companies with gross revenues of as much as $125 million."

The Commission also justifies its decision to eliminate bidding credits in closed PCS auctions due to the lack of a "total assets" threshold for calculating what constitutes a small business.[2] We support the need for a total assets test in order to avoid the anomalies described by the Commission. Without a total assets test, larger companies can unfairly qualify for small business benefits. However, we believe this discrepancy occurs in all auctions where small business benefits are available, not only broadband PCS auctions. The Commission's ongoing concern does not justify the elimination of bidding credits in closed PCS auctions. Rather, the Commission should revise its generic auction rules to incorporate a total assets test, as it has already proposed in another proceeding.[3]

By drastically reducing the spectrum available for designated entities, the FCC has impaired the opportunity of rural telephone companies, small businesses and other designated entities to bid upon PCS licenses in markets of all sizes and establish viable PCS businesses. NTCA, OPASTCO, RTG, and the SBA respectfully request that you reconsider your decision to eliminate the PCS spectrum set-aside for the designated entities identified by Congress. In the alternative, we strongly urge you to adopt the changes to the Sixth Report discussed herein for use beginning with Auction No. 35.

[2] See *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Service (PCS) Licenses*, Sixth Report and Order and Order on Reconsideration in WT Docket No. 97-82, FCC 00-313 at ¶ 43.
[3] *Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures*, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making in WT Docket 97-82, FCC 00-274 (rel. August 14, 2000)

In accordance with section 1.1206 of the Commission's ex parte rules, we are submitting two copies of this letter to the FCC Secretary for inclusion in the record of this proceeding.

Sincerely,

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Enclosure

cc
Commissioner Susan Ness
Commissioner Harold W. Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Tom Sugrue, Chief, Wireless Telecommunications Bureau
Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division

Company	Gross Revenues FY 1999	**Estimated FY 2000	*Percentage greater than largest Very Small Business
AT&T	$62.4b	$65b	433333%
AT&T Wireless	7.6b	10.6b	70666%
Nextel	3.3b	4.7b	31333%
SBC	49.5b	51.6b	344000%
Verizon	58.5b	66b	440000%
Sprint PCS	19.9b	22.5b	150000%
Bell South	25.2b	26.5b	176666%
US West	3.93b	5.50b	36666%
Telecorp/Tritel	94.5m	212.4m	1416%
VoiceStream	475.5m	1.4b	9333%
CFW Comm.	73.8m	86.2m	575%
Dobson	319.9m	468.2m	3121%

*The FCC Standard for a "Very Small Business" is $15 million in average gross revenues for the three years preceding the auction. Comparisons made using carriers' Estimated FY 2000 revenues and $15 million figure.

**Estimate based upon extrapolating published revenues from first two or three quarters.